

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 1168/2016

(MOHD.NISAR SHEIKH IMAN & ANOTHER **VERSUS** STATE OF MAHARASHTRA & OTHERS)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri V.S. Kukday, counsel for the petitioners.
Shri Nikhil Joshi, A.G.P. for the respondents.

**CORAM : SMT.VASANTI A. NAIK AND
V.M. DESHPANDE, JJ.**

DATE : MARCH 30, 2016.

By this writ petition, the petitioner challenges the action of the respondent no.4 of seizure of the two trucks of the petitioners being without jurisdiction and contrary to the provisions of Section 48(8) of the Maharashtra Land Revenue Code, 1966.

The petitioner no.1 claims to be the owner of one truck and the petitioner no.2 claims to be the owner of the other, that were allegedly seized by the respondent no.3 while the petitioners were transporting sand to Nandgaon Peth in Amravati district. It is the case of the petitioners that the drivers of the respective trucks loaded two brass of sand from the sand ghat at Khairi Dhalgaon and since the trucks were loaded at about 5.30 p.m., the sand was not immediately transported. It is stated that the respondent no.4-Circle Officer of Nandgaon Peth visited the factory premises and illegally seized the trucks of the petitioners by drawing a panchanama. It is stated that the trucks were thereafter handed over to the Police Station Officer, Nandgaon Peth. It is stated that the drivers of the trucks were directed to remain present in the office of the respondent no.3-Tahsildar and the Tahsildar handed over the challans directing the petitioners to deposit a sum of Rs.1,48,716/- as

penalty and royalty in the Government Treasury. In the aforesaid set of facts, the petitioners have sought a declaration that the action on the part of the respondent no.4-Circle Officer in seizing the trucks of the petitioners is illegal and contrary to the provisions of Section 48(8) of the Code of 1966. According to the petitioners, the penalty could not have been imposed upon the petitioners without hearing the petitioners. The petitioners have challenged the action on the part of the respondent no.3-Tahsildar in imposing the penalty on the petitioners.

Shri Kukday, the learned counsel for the petitioners, submitted that the action on the part of the Circle Officer in seizing the trucks of the petitioners is contrary to the provisions of Section 48(8) of the Maharashtra Land Revenue Code, 1966. It is stated that only the revenue officer who is not below the rank of Tahsildar is entitled to seize and confiscate the mineral, the machinery and the equipments used for transporting the same. It is submitted that in the instant case, the Circle Officer had seized the trucks of the petitioners and the Circle Officer, being a revenue officer below the rank of a Tahsildar, was not entitled to seize the trucks. It is stated that it is held by this Court in the judgment dated 14.01.2016 in Writ Petition No.6482 of 2015 that a Circle Officer could not have seized the truck of the petitioner therein and the action of seizing of the truck by the Circle Officer being illegal was set aside. It is submitted that actual seizure was by the Circle Officer and when the trucks were brought to the police station, a show was made of drawing the panchanama in respect of the seizure of the trucks by the Tahsildar. It is submitted that the petitioners were not granted any opportunity before the penalty was imposed. It is submitted that the entire action on the part of the respondents is illegal and is liable to be set aside.

Shri Joshi, the learned Assistant Government Pleader appearing for the respondents, has supported the action of the respondents and submitted that though the petitioners possessed the transit passes for transporting only one brass of sand in each of the trucks, it was found by the respondent-Authorities that the trucks of the petitioners were loaded with 7.29 Brass of sand. It is submitted that the seizure of the trucks was not by the Circle Officer and it is clear from the copy of the panchanama annexed to the affidavit-in-reply filed on behalf of the respondents that the seizure of the trucks was by the Tahsildar himself. It is submitted that the petitioners were granted an opportunity before imposing the penalty and the petitioners have admitted in the reply to the show cause notice that the trucks of the petitioners were loaded with 4 Brass of sand. It is stated that the penalty is imposed after granting an opportunity to the petitioner. It is stated that the petitioners have admitted that the trucks of the petitioners were loaded with much more sand than the permissible quantity. It is submitted that in terms of the interim orders of this Court, the trucks are released in favour of the petitioners but, it is stated that it would be necessary in the circumstances of the case to re-seize the trucks that are released in favour of the petitioners as the ad-interim order was passed on a belief that the trucks were seized by the Circle Officer and not by the Tahsildar. It is submitted that the action of the respondents is just and proper and in consonance with the provisions of Section 48(8) of the Code of 1966. It is stated that the statements of the drivers also clearly show that the drivers of the trucks did not possess the royalty passes at the time of transportation of the sand it is stated that huge quantity of sand was being illegally transported by the petitioners and the Tahsildar, therefore, did not have any course open but, to seize the trucks of the petitioners. The

learned Assistant Government Pleader relied on the order dated 22.03.2016 in Writ Petition No.1708 of 2016 to submit that in similar set of facts, this Court had dismissed the writ petition filed by the petitioner in the said writ petition and had held that the action of the respondents in seizing the trucks was proper and in consonance with the provisions of Section 48(8) of the Code of 1966.

On hearing the learned counsel for the parties, it appears that the relief sought by the petitioners cannot be granted in exercise of the writ jurisdiction. The respondents have annexed a copy of the panchanama in respect of the seizure of the trucks to the affidavit-in-reply. The panchanama bears the signatures of the drivers of the trucks. It is apparent from the copy of the panchanama that is brought on record by the respondents that the seizure of the trucks is not by the Circle Officer but, by the Tahsildar. The reliance placed by the petitioners on the document at Annexure-3 to substantiate the submission that the seizure was by the Circle Officer is not well founded. The document at Annexure-3 is merely an internal communication between the Circle Officer and the Tahsildar, Amravati in respect of the seizure of the trucks. In any case, the panchanama is duly signed by the drivers of the trucks owned by the petitioners. The said panchanama shows that the seizure of the trucks was by the Tahsildar and not by the Circle Officer. Also, the petitioners have admitted in the reply to the show cause notice issued by the Tahsildar in the matter of imposition of penalty under Section 48(8) of the Code that the trucks of the petitioners were carrying more sand than that was permissible. The transit passes annexed to the petition at Annexure-2 also clearly show that the sand was required to be transported to Akola whereas the sand was being transported to Amravati

and was seized at Nandgaon Peth. It is necessary to note that though in terms of the transit passes that were issued to the petitioners, the sand was required to be transported from Nagpur and the destination was Akola, the sand in the trucks was found to have been unloaded in the Golden Fibre premises at Nandgaon Peth in Amravati district. When the trucks were required to unload the sand at destination-Akola, it is surprising that the sand carried in the trucks of the petitioners was unloaded at Nandgaonpeth in Amravati and was found in the Golden Fibre premises. The sand could have been unloaded from the truck only at Akola as per the transit passes. It is apparent from a reading of the panchanama, the statements of the drivers of the trucks of the petitioners as also the reply filed by the petitioners to the show cause notice in the matter of imposition of penalty that the trucks of the petitioners were illegally carrying the sand and the seizure of the trucks of the petitioners was rightly made by the Tahsildar. We further find that the petitioners have stated in their reply to the show cause notice that minimum penalty may be imposed on them. If it was the case of the petitioners that they had not carried excess sand than the permissible quantity, there was no question of seeking the imposition of the lesser penalty. We find on a reading of the affidavit-in-reply as also the rejoinder filed on behalf of the petitioners that the seizure of the trucks in the instant case was by the Tahsildar himself and the petitioners cannot effectively challenge the seizure of the trucks on the ground that the same was effected by the Circle Officer who is an officer below the rank of the Tahsildar and was not empowered to seize the trucks under Section 48(8) of the Code. We also find that a reasonable opportunity was afforded to the petitioners before imposition of penalty and the replies of the petitioners were considered.

Since on hearing the parties, we find that the trucks were not seized by the Circle Officer but, were seized by the Tahsildar, the interim order dated 17.02.2016 stands vacated and the supratnamas stand cancelled. The respondents should immediately re-seize the trucks of the petitioners. It is well settled that an order of stay granted pending the disposal of the writ petition/suit or other proceedings comes to an end with the dismissal of the substantive proceedings and it is the duty of the Court in such a case to put the parties to the original position. It will be useful to refer to the celebrated case of *M/s Kanoria Chemicals & Industries Ltd. Etc. Versus U.P. State Electricity Board & Others*, reported in **1997(2) Scale 719** in this regard. It is, however, made clear that if the petitioners deposit the amount of penalty, as directed by the order of the Tahsildar, dated 15.02.2016, the trucks of the petitioners may not be re-seized.

With the aforesaid observations, we dismiss the writ petition with no order as to costs.

JUDGE

JUDGE

APTE